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Corporations--Insurance Companies--Insolvency--Interest (Matter of People (Norske Lloyd Insurance Company), 249 N.Y. 139 (1928))

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evidence that what plaintiff did, affected the amount. Neither the terms of reorganization nor prices of the new securities had anything to do with the value of the services. Plaintiff should be paid for his work according to the standard of the market, or as nearly thereto, as can be ascertained.[5]

CORPORATIONS—INSURANCE COMPANIES—INSOLVENCY—INTEREST.—In this case the Norske Lloyd Company made the customary deposit required by the Insurance Law [1] as a condition of doing business in this State. It also had created certain trusts in accordance with the provisions of the Statute. The corporation has been adjudicated a bankrupt in its domicile and the State Superintendent has taken possession of these and other free assets for the purpose of liquidation and distribution. Claims were presented by those who dealt with the company in the United States and who, consequently, were entitled to the protection of the statute. The question to be decided is whether such creditors are entitled to be paid interest from the day their claims were proved until paid, in addition to the payment of their claims in full. *Held,* they are entitled to such payment. If, as is the case here, the assets are sufficient to pay all claims in full with interest, then interest will be allowed. Matter of People (Norske Lloyd Insurance Company) 249 N. Y. 139 (1928).

The funds deposited by the insurance company are primarily for the benefit of creditors in the United States.[2] Only those who claim under transactions with the United States branch of the company are entitled to share as such creditors in the distribution under the statute.[3] If there remains a surplus after all proper charges and claims have been deducted, this must be transferred to the domiciliary receiver.[4] As a general rule, after property of an insolvent passes into the hands of a receiver interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate.[5] When the fund is insufficient to pay in full all the creditors who have the right to share in it, the burden of consequent loss and injury should be equitably distributed among them. Where, however, the fund in question proves sufficient to pay all claims in full with interest, the

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[5] Winch v. Wainer, 186 App. Div. 710, 174 N. Y. S. 819 (1st Dept. 1919); Plattenberg v. Briggs, 166 App. Div. 326, 151 N. Y. S. 925 (3rd Dept. 1915).

[1] State Ins. Law (Cons. Laws, Ch. 28), Sec. 27.

[2] Matter of People (City Eq. Fire Ins. Co.) 238 N. Y. 147, 156, 144 N. E. 484 (1924).

[3] *Supra,* 242 N. Y. 148 at 167 (1926).

[4] People v. Granite State Provident Asso., 161 N. Y. 492, 55 N. E. 1053 (1900); Southern B. & L. Assn. v. Miller, 118 Fed. Rep. 369 (C. C. A. 4th Cir. 1902).

[5] Thomas v. Western Car Co., 149 U. S. 95 (1893).

interest accruing during liquidation is allowed.[6] The fund in the present case is sufficient to pay the claims with interest. Since the United States branch of the company functioned like a domestic corporation, it seems but common justice that its creditors, whose claims are protected by statute, should receive interest on those claims, as they would if they had been dealing with a domestic corporation under the same circumstances. These creditors are the only claimants who are entitled to share in this distribution. All others must look to the domiciliary receiver. It is evident the Legislature intended to fully protect them. It is not full protection if they are deprived of the payment of interest, because elsewhere assets for the payment of debts are insufficient.

EMINENT DOMAIN—CONDEMNATION PROCEEDINGS—WATER AND WATERCOURSES—CONDEMNATION BY POWER CORPORATION.—Relator and defendant own adjoining plots of land on the Salmon River in New York. Defendant's business, the manufacture and sale of electric power, has increased to such an extent that it is necessary for it to have an additional power site. For this purpose it sought to acquire relator's land in a proceeding under the Conservation Law.[1] The statute authorizes the condemnation by a public utility, owning a major part of the head and volume of the usable flow of power of a single undeveloped water power site, of property necessary for the full development and utilization of water power at such site. Prior to the institution of the proceeding, defendant obtained a certificate of necessity from the Public Service Commission and the latter's determination was sustained by the Appellate Division.[2] Relator attacks the decision upon the grounds that subdivision two [3] of the statute is the appropriate provision controlling the situation; that subdivision three upon which defendant relies does not govern, and even assuming that it does, the power to be developed is not for a public use. It further contends that the law is unconstitutional because it violates the equal protection clause of the 14th Amendment. *Held,* for the defendant. People *ex rel* Horton v. Prendergast, 248 N. Y. 215 (1928).

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[6] People v. Merchants Trust Co., 187 N. Y. 293, 79 N. E. 1004 (1907); Amer. Iron & Steel Mfg. Co. v. Seaboard Air Line Ry. Co., 233 U. S. 261 (1914).

[1] Conservation Law, Cons. Laws (1911), Ch. 65, Sec. 624, Subdivision 3.

[2] 220 App. Div. 351, 222 N. Y. S. 29 (3rd Dept. 1927).

[3] Subdivision 2 provides that real property may be acquired under an exercise of the right of eminent domain, which is necessary to the full development of water power sites, where such sites on a stream or in a given locality cannot be developed separately as efficiently and economically, as under a plan for their development together; and where the owners transfer the same to a corporation organized for the production of power and the Commission determines that it can be better developed under such a plan than singly, etc.